

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

SHYANDREA HESTER and MARY
HESTER,

Plaintiffs,

v.

LOWNDES COUNTY COMMISSION,
CHRISTOPHER BROWN,
EMERGYSSTAT, DEPUTY JIMMY
HARRIS, et al.,

Defendants.

CIVIL ACTION NO.:
CV-06-572-DRB

MOTION TO DISMISS DEFENDANTS
EMERGYSSTAT, INC. AND CHRISTOPHER BROWN

COME NOW, **Energystat, Inc. and Christopher Brown**, defendants in the above-styled cause, and move this Court to dismiss plaintiffs' claims against these defendants pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, as the plaintiffs' Complaint fails to state a claim against Energystat, Inc. and Christopher Brown, upon which relief may be granted. As reasons for so moving, these defendants submit its Memorandum Brief in support of its Motion filed contemporaneously herewith and the following:

1. There is no corporate liability for alleged violations of constitutional rights pursuant to 42 U.S.C. §1983 on the basis of *respondeat superior*. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691-92 (1978).

2. Plaintiffs have not sufficiently demonstrated how these defendants' alleged actions established state action.

3. Plaintiffs have not sufficiently demonstrated how the alleged injurious conduct by these defendants deprived the plaintiffs of their constitutional or statutory rights, privileges or immunities.

4. Plaintiffs' claims against fictitious defendants A-G are due to be dismissed as such pleading is not permitted in federal court.

WHEREFORE, PREMISES CONSIDERED, defendants, Emergystat, Inc. and Christopher Brown, request that this Honorable Court enter an Order dismissing this cause as to these defendants.

Respectfully submitted,

s/ Celeste Holpp
Celeste P. Holpp
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and Christopher Brown
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of July, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

James Earl Finley
Kendrick E. Webb
C. Richard Hill, Jr.

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Tyrone Townsend
4821 Leola Lane
Birmingham, Alabama 35207

Honorable Ruby Jones
Lowndes County Court Clerk
P.O. Box 876
Hayneville, Alabama 36040

s/ Celeste P. Holpp
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